IN THE
SUPREME COURT OF THE UNITED STATES

No. 72-6650

RICHARD BROWN,

Petitioner,

-vs-

PEOPLE OF THE STATE OF
ILLINOIS,

Respondent.

PETITION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, RICHARD BROWN, by his Counsel the Public Defender of Cook County, Illinois, by JOHN M. KALNINS, Assistant Public Defender asks leave to file a Petition for a Writ of Certiorari to the Supreme Court of Illinois, without pre-payment of costs and to proceed in forma pauperis.

Counsel for Petitioner states on information and belief that Petitioner is indigent and without funds to pay costs or fees incident to the filing this Petition for a Writ of Certiorari to the Supreme Court of Illinois.

Petitioner's own affidavit of indigency will be forwarded to this Court immediately upon receipt thereof.

JAMES J. DOHERTY
Public Defender of Cook County

By _____

JOHN M. KALNINS
Assistant Public Defender
407 Civic Center
Chicago, Illinois 60602
443-6350

Counsel for Petitioner.

SUBSCRIBED and SWORN TO before me

this 31 day of October, A.D., 1972.

_____
Notary Public

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D, 1973

No. 73-6650

RICHARD BROWN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS.

JAMES J. DOHERTY
Public Defender of Cook County,
Illinois, Chicago, Illinois

By: JOHN M. KALNINS,
ROBERT P. ISAACSON
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Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D., 1973

No.

RICHARD BROWN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered on January 31, 1974 affirming petitioner's conviction of the offense of murder.

OPINION BELOW

Petitioner was found guilty by a jury in the Circuit Court of Cook County and sentenced to serve not less than 15 nor more than 30 years in the penitentiary. Petitioner's conviction was affirmed on a direct appeal by the Supreme Court of Illinois on January 31, 1974 in an opinion published at 56 Ill. 2d 312 (1974). No petition for rehearing was filed.

JURISDICTION

The jursidiction of this Court is invoked pursuant to 28 U.S.C. 1257 (3). Petitioner's conviction was affirmed by the Illinois Supreme Court on January 31, 1974, and this petition is timely filed within 90 days thereafter.

QUESTION PRESENTED FOR REVIEW

Does the giving of Miranda warnings, without more, render admissible under Wong Sun v. United States, 371 U.S. 471, a statement procured immediately following an unlawful arrest for questioning?

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment to the Constitution of the United States:

"The right of the people to be secure in their persons, houses,...against unreasonable searches and seizures shall not be violated . . ."

Fifth Amendment to the Constitution of the United States:

"No person . . . shall be compelled in a criminal case to be a witness against himself . . ."

Fourteenth Amendment to the Constitution of the United States:

" . . .nor shall any State deprive any person of life, liberty or property without due process of law . . ."

STATEMENT OF THE CASE

Petitioner was convicted of murder on the basis of a statement which was introduced at his jury trial over petitioner's objection. This petition draws into question the admissibility of the statement in light of Wong Sun v. United States, (1963) 371 U.S. 471.

On direct appeal from the trial court to the Supreme Court of Illinois the Court found that Petitioner's arrest and detention were unlawful in that it was without probable cause or warrant of any kind. The conviction was affirmed on the theory that the giving of Miranda warnings, without regard to other circumstances, served to break the causal connection between the illegal arrest and the giving of the statements.

Because the opinion of the Illinois Supreme Court chose to disregard the totality of circumstances of the unlawful arrest, we set them out below.

CIRCUMSTANCES OF THE UNLAWFUL ARREST FOR QUESTIONING AND THE PROCUREMENT OF STATEMENTS

Police officers of the City of Chicago learned of the homicide of Roger Corpus on May 6, 1968. On May 13, 1968 several officers went to Petitioner's apartment at about 4:30 or 5:00 p.m. They did not have an arrest or search warrant, and the Illinois Supreme Court found that they did not have probable cause to arrest Petitioner. Not finding the Petitioner or anyone else to be home, the officers nevertheless entered Petitioner's apartment, conducted a search, (R. 462) and concealed themselves therein. They waited inside until about 7:45 p.m., at which time Petitioner returned home, and was arrested at gunpoint, placed against a wall, searched, and handcuffed with his hands behind his back. (R. 463) Petitioner was then transported to the Maxwell Street police station and placed in an interrogation room shortly after 8:00 p.m.

One of the officers testified that Petitioner was "brought in for investigation" (R. 19) and could not recall that the name of the deceased was mentioned. (R. 73) The other officer testified that Petitioner was "arrested for questioning," and that once police had him, they intended to question Petitioner. (R. 468)

The Illinois Supreme Court found that Petitioner was orally advised of his rights under Miranda. His interrogators told Petitioner that they knew that Petitioner had been involved in a shooting incident in a pool room about a week before the homicide, that a bullet recovered from the ceiling of the pool room matched bullets found in the body of the deceased, and that Petitioner's fingerprints were found on a bottle in the apartment of the deceased.(R. 106) At trial the State stipulated that the bullet from the ceiling of the pool room could not be compared with the bullets in the body of the deceased, and that no fingerprints other than those of the deceased were found in the deceased's apartment. (R. 542,543)

At this time Petitioner said that one Jimmie Claggett had shot the deceased. Petitioner testified that at this time he started to give a statement, that he was read Miranda rights from a card, and was told that he would not need a lawyer for he would not be charged. (R. 112) The interrogator said that Petitioner

would not be charged, and that all they wanted from him was a statement. (R. 112) Petitioner was also told during this statement that he would be a State's witness, and that there would be a deal made between the State's Attorney and the Public Defender. (R. 120) Although one of the officers testified that there were no promises of leniency made, he conceded that there was talk of turning State's evidence (R. 42),and that Petitioner was told that if he helped find Claggett, this would be taken into consideration. (R. 452)

Within the first hour of his unlawful detention, between 8:45 and 9:00 p.m. Petitioner signed a 2-page statement, typed up by police. This statement contained no Miranda advisements, and probably for this reason was not introduced at his trial. In the statement Petitioner said that he had met Claggett at the apartment of the deceased, that Claggett had shot the deceased, that Petitioner tried unsuccessfully to prevent the shooting, and that Claggett ordered Petitioner at gunpoint to tie up the deceased, which he had done.

At 9:30 p.m. the two officers took Petitioner to look for Claggett. After an hour of driving around without success, the officers took Petitioner to central police headquarters to look for a picture of Claggett. Although the officers knew that there was a night bond court open at that hour at central police headquarters, they did nothing to bring Petitioner before a magistrate.

They left central police headquarters at 11:00 p.m. and returned to the area where they thought Claggett could be found. On this occasion, Petitioner pointed out Claggett on the street, and he was taken into custody. They then returned to the Maxwell Street Station, arriving at 12:20 a.m., and Petitioner was placed in the same interrogation room.

At 2:00 a.m. an Assistant State's Attorney arrived, and a second statement was taken from Petitioner in the presence of a court reporter. This statement contained Miranda warnings, but when it was transcribed, the Petitioner refused to sign it. The questioning ceased at 3:00 a.m. This second statement was introduced at Petitioner's trial.

Petitioner was first allowed to make a phone call at 4:00 a.m., at which time he called his mother. No attorney was provided for Petitioner until he went before a magistrate at about 9:30 that same morning, about 14 hours after his unlawful arrest.

REASON FOR GRANTING THE WRIT

THE RULE OF PER SE ATTENUATION FASHIONED BY THE ILLINOIS SUPREME COURT DISREGARDS THE VINDICATION OF PETITIONER'S 4TH AND 14TH AMENDMENT RIGHTS AND MAKES THEM NON-EXISTENT.

Petitioner's conviction was upheld by the Illinois Supreme Court. Petitioner contended that the statements he gave police after an illegal arrest should have been suppressed as the fruits of the illegality under Wong Sun v. United States, (1963) 371 U.S. 471. In rejecting this contention, the Illinois Supreme Court reasoned that the mere giving of the Miranda warnings was sufficient to "purge the primary taint of the unlawful invasion." In order to reach this issue, the Illinois Supreme Court held there was no probable case to arrest petitioner.

In Wong Sun, federal agents illegally entered defendant Toy's living quarters and arrested him. Toy made statements implicating himself and Johnny Yee. Agents arrested Yee and seized narcotics which he said were obtained from Toy and Wong Sun. All three were arraigned and released on their own recognizance. Several days later, they returned voluntarily and made written statements. This Court excluded the statements made by Toy in his bedroom as the fruits of the official illegality and the later statements on other grounds. This Court then admitted Sun's statement since the connection between it and the illegal arrest of Sun had "become so attenated as to dissipate the taint." at 371 U.S. 491

Petitioner urges that in failing to overturn the trial court's refusal to suppress the statement, the Illinois Supreme Court ignored the violation of his Fourth and Fourteenth Amendment rights as articulated in Wong Sun. Since the Illinois Supreme Court pointed to no factor other than the giving of the Miranda warnings as constituting "attenuation", the opinion establishes a "per se attenuation" rule in cases in which Miranda warnings are given. This "per-se attenuation" rule in choosing to focus solely on whether the giving of a statement complies with the Fifth Amendment, necessarily ignores the Fourth Amendment aspects of Wong Sun.

The United States Supreme Court stated in Wong Sun, 371 U.S. 471, 484:

> "In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, Boyd v. United States, 116 U.S. 616, this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search. Weeks v. United States, 232 U.S. 383.

The Court then reasoned that the Fourth Amendment which compels suppression of physical evidence also compels suppression of oral statements:

> "Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion. See Nueslein v. District of Columbia, 115 F. 2d 690. Nor do the policies underlying the exclusionary rule invite any logical distinction between physical and verbal evidence. Either in terms of deterring lawless conduct by federal officers, Rea v. United States, 350 U.S. 214, or of closing the doors of the federal courts to any use of evidence unconstitutionally obtained, Elkins v. United States, 364 U.S. 206, the danger in relaxing the exclusionary rules in the case of verbal evidence would seem too great to warrant introducing such a distinction." at 371 U.S. 485-86. (Footnote omitted)

In Traub v. Connecticut, (1963) 374 U.S. 493, this Court, in a per curiam opinion, vacated the judgment of the Connecticut Supreme Court and remanded the case for further consideration in light of Wong Sun and Ker v. California, 374 U.S. 23.

First, Traub applies Wong Sun to state proceedings. Second, since the Connecticut Supreme Court had already held that the confessions were voluntary, this Court's vacating and remanding can only mean one thing: that apart from the Fifth Amendment Privilege Against Self-Incrimination, the Fourth Amendment (applicable to the states through the Fourteenth Amendment) provides protection to an individual making a confession after an illegal arrest.

In Morales v. New York, (1969) 396 U.S. 102,this Court considered the same issue petitioner is now raising. The New York Court of Appeals affirmed Morales' conviction, rejecting his claim for relief under Wong Sun, not on the ground that there was probable cause to arrest but rather on the ground that the police conduct involved was reasonable under the circumstances of the case. This Court first held that the confessions were voluntary. Expressing no opinion as to the legality of custodial questioning on less than probable cause for a full-fledged arrest, the Court remanded for a hearing:

> "Given an opportunity to develop in an evidentiary hearing the circumstances leading to the detention of Morales and his confessions, the State may be able to show that there was probable cause for an arrest or that Morales' confrontation with the police was voluntarily undertaken by him or that the confessions were not the product of illegal detention." at 396 U.S. 105

Since this Court had already held the confessions to be voluntary, the decision to vacate and remand can mean only one thing: That apart from the Fifth Amendment Privilege Against Self-Incrimination, the Fourth Amendment provides protection to an individual giving a confession after an illegal arrest.

In Alderman v. United States, (1968) 394 U.S. 165, this Court vacated the conviction and remanded to the District Court to determine if the government violated the Fourth Amendment rights of Alderman by engaging in electronic surveillance. In that opinion, Mr. Justice White stated, at 394 U.S. 178:

> "In Wong Sun, the words spoken by Blackie Toy when the police illegally entered his house were not usable against him because they were the fruits of a physical invasion of his premises which violated the Fourth Amendment."

The Fifth Circuit has consistently adhered to the view that Wong Sun is a Fourth Amendment case. In Rogers v. United States, 330 F. 2d 535 (5th Cir. 1964), cert. denied 379 U.S. 916,the court never reached the issue presented in the case at bar, finding that probable cause for the arrest existed. However, the court stated at 330 F. 2d 541;

> "There is no doubt that in Wong Sun the Supreme Court is no longer speaking the language of coerced confessions and the Fifth Amendment."

Then in Collins v. Beto, 348 F. 2d 823 (5th Cir. 1965), (a pre-Miranda case) in reversing the conviction for murder, Judges Tuttle and Friendly both held that the confession was involuntary. Although Judge Friendly chose not to reach the Wong Sun issue, Judge Tuttle concluded that without regard to the involuntariness of the confession, the confession should be suppressed as the fruit of the illegal arrest. (348 F. 2d at 827) In referring to Wong Sun, Judge Tuttle stated at 348 F. 2d 823, 827 that:

> "There the Supreme Court based its application of the exclusionary rule on the need for deterring unlawful police conduct. 371 U.S. at 486, 83 S. Ct. 407. The theory of deterrence operates 'only if an excludable piece of evidence is the target of police activity.' Comment, 69 Yale L. J. 432, 436, n. 12."(footnote omitted)

Petitioner urges that since his statements were the target of the Chicago policeman's activities, they should have been suppressed. According to one officer, Petitioner was "brought in for investigation." (R. 19) According to the other arresting officer, Petitioner was "arrested for questioning." (R. 65) In any event, the Illinois Supreme Court's "per se attenuation" rule totally ignores the Fourth Amendment considerations of Wong Sun.

In United States v. Kilgen, 431 F. 2d 627 (5th Cir. 1970), the Fifth Circuit held that a voluntary confession given after the full Miranda warnings should have been suppressed as the fruits of an illegal arrest.* In applying the Fourth Amendment rationale of Wong Sun, the Court stated:

> "Here there was no technical violation. There was an arrest in violation of appellant's constitutional rights. The only intervening occurrence present here was the warning they received by the postal authority of their constitutional rights. This, we do not think is sufficient to break the chain of events that led directly from the illegal arrests to the giving of the confession to the postal authorities while appellant was in custody under the illegal restraint." at 431 F. 2d 632.

After granting the government's motion for rehearing, the Fifth Circuit later affirmed Kilgen's conviction in United States v. Kilgen, 445 F. 2d 287 (5th Cir. 1971) The court held that since the police officers had a good faith belief in the validity of the arrest, the confession was properly admitted. Referring to the fact that both the Supreme Court of Florida and the federal district had upheld the constitutionality of the statute and that there was no hint of any abusive police conduct, the court stated:

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*The arrest in Kilgen was illegal because it was pursuant to a statute found to be unconstitutional by the Fifth Circuit.

> "In short, this is a clear case of police officers who, with the utmost regard for the rights of the defendant, carried out their sworn duty to make an arrest and obtain evidence under the law as it then existed, at 445 F. 2d 289.

Petitioner urges that the Chicago police officers did not act in good faith in arresting him. To the contrary, they acted in total disregard of his constitutional rights. According to one officer, Petitioner was "brought in for investigation." (R. 19) According to the other arresting officer, Petitioner was "arrested for questioning." (R. 65) Under the Rogers, Collins, and Kilgen line of cases, his statements to police should have been suppressed. For other cases excluding confessions as the fruits of illegal arrests, see United States v. Sims, 231 F. Supp. 251 (Dist. Md. 1964); and State v. Mercurio, (1964) 194 A. 2d 574.

By failing to suppress Petitioner's statement to the police, the Illinois Supreme Court totally ignored the violation of his Fourth and Fourteenth Amendments rights and has sanctioned the unconstitutional, investigative arrest. According to the police officers', testimony, the purpose of the unconstitutional arrest was to procure a confession from Petitioner. Therefore, the application of the Fourth (and Fourteenth) Amendment considerations in Wong Sun is especially appropriate. In the alternative, the Illinois Supreme Court's establishing a "per se attenuation" rule deprived Petitioner the opportunity to show that his confession was the fruit of official illegality.

CONCLUSION

For the reasons urged herein, it is respectfully requested that a writ of certiorari issue to review and reverse the judgment of the Supreme Court of Illinois entered herein.

Respectfully submitted,

JAMES J. DOHERTY
Public Defender of Cook County

By Robert P. Isaacson
ROBERT P. ISAACSON
Assistant Public Defender

April 29, 1974

Docket No. 43319 -Agenda 1 November, 1973.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,
v. RICHARD BROWN, Appellant.

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Defendant, Richard Brown, was found guilty of murder by a jury in the circuit court of Cook County and sentenced to not less than 15 nor more than 30 years in the Illinois State Penitentiary.

Defendant and Jimmie Claggett were charged in a four-count indictment with the murder of Roger O. Corpus. At approximately 5:00 P.M. on May 6, 1968, Corpus's body, his ankles bound with white electric cords, was discovered lying on the floor of the living room in his apartment. The door to the apartment was open, lights were on, and music was playing, presumably on a radio. The deceased's wallet, credit cards and much of his clothing were missing.

As grounds for reversal defendant contends first that the trial court erred in denying his motion to suppress two statements, one made to the arresting police officers, and the other to an assistant State's Attorney. He argues that his arrest was unlawful in that it was made in his home, at night, without a warrant, after forcible entry by the police and that there were no exigent circumstances shown which justified the failure to seek a warrant for his arrest. He contends further that the statements taken from him following his arrest were obtained prior to his being taken before a magistrate, that they are "the products of the unlawful custody" and should have been suppressed and excluded from introduction into evidence.

The People contend that at the time of defendant's apprehension the arresting officers had reasonable grounds to believe that he was implicated in the murder and that the arrest without a warrant was, therefore, lawful.

The testimony adduced at the hearing on the motion to suppress shows that on May 13, a week after the murder, two detectives went to defendant's apartment, that one of them concealed himself within the apartment and the other concealed himself outside the apartment. The entry into the apartment was accomplished in defendant's absence and without a warrant. After they had waited for approximately three hours defendant appeared, and Detective Lenz greeted him with drawn revolver and placed him under arrest.

In support of their contention that the police officers had probable cause for defendant's arrest, the People rely principally on the testimony of the deceased's sister, Constance DeLoach. The record, however, shows that Mrs. DeLoach testified, not at the hearing on the motion to suppress, but at the trial, and there is no evidence that the police, at the time of the arrest, were possessed of knowledge of the matters to which she testified. The deceased's brother testified that he had given defendant's

name to the police on May 7, but made no suggestion that defendant was responsible for the death because "nobody asked." Later, apparently on May 9, the police were told that on the day of the murder defendant had been seen in the building where the deceased lived.

Upon review of the record, we conclude that the testimony fails to show that at the time of his apprehension there was probable cause for defendant's arrest, that his arrest was, therefore, unlawful, and we consider next the question whether the statements were the product of the illegal arrest and, therefore, improperly admitted into evidence.

The People contend that even assuming that defendant's arrest was illegal, his statements were voluntarily made after he was fully and properly advised of his right to remain silent and of his right to have an attorney appointed to represent him and to have him present during questioning, and that the giving of the *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436) served to break the causal chain so as to sufficiently attenuate and dissipate the taint of the unlawful arrest. (*Wong Sun v. United States*, 371 U.S. 471.) They argue that his statements did not result from his arrest but rather from the defendant's realization that, even from the facts already known to police, he was implicated in the killing and that he wanted it known that he was merely a bystander and that Claggett was the actual killer.

The testimony adduced at the hearing on the motion to suppress shows that following his arrest defendant was taken to an interrogation room at the Maxwell Street station. Officer William Lenz testified that defendant was advised of his constitutional rights and stated that he understood them. Officers Lenz and William Nolan "had a conversation with" defendant relative to the slaying of Corpus after which defendant agreed to give them a statement. A two-page statement was taken and Officer Lenz testified that the statement "bears the signature of Richard Brown." This statement, however, is not included in the record and no issue is raised concerning it in this appeal. After this statement was taken the officers took the defendant to the Madison and Homan area in an effort to find Claggett. They did not find Claggett and went to the identification section of the central police station to obtain a photograph of him. They returned to the area where they had sought Claggett and found and arrested him. Following a brief conversation with Claggett the police officers talked briefly with defendant and then called an assistant State's Attorney. The assistant State's Attorney arrived at 2:00 A.M. and talked with defendant for approximately 25 minutes. During this period a court reporter arrived and the assistant State's Attorney took a question-and-answer statement which was transcribed, but when it was presented to defendant at approximately 4:00 A.M. he refused to sign it. Over objection the circuit court permitted the statement to be read to the jury and it was then, again over objection, offered and admitted into evidence. Contained in this statement are explicit *Miranda* warnings given the defendant by the assistant State's Attorney and defendant's responses indicating that he understood them. The second statement which defendant contends was erroneously admitted was introduced into evidence in the testimony of police officer Nolan who related to the jury what was told him by defendant during interrogation which preceded the taking of the question-and-answer statement. Both Officers Lenz and Nolan testified that defendant had been advised of his constitutional rights.

From our examination of the record, in the light of the circumstances shown by the testimony, we conclude that the giving of the *Miranda* warnings, in the first instance by the police officer and in the second by the assistant State's Attorney, served to break the causal connection between the illegal arrest and the giving of the statements, and that defendant's act in making the statements was "sufficiently an act of free will to purge the primary taint of the unlawful invasion." (*Wong Sun v. United States*, 371 U.S. 471, at 486.) We hold, therefore, that the circuit court did not err in admitting the statements into evidence.

Defendant contends next that even if the statements were properly admitted into evidence, they were exculpatory and he was not proved guilty of murder beyond a reasonable doubt. In the statements defendant admitted that he was present in the deceased's apartment, that at Claggett's direction he tied the deceased's hands and feet and although he stated Claggett fired the fatal shots, he had sold him the pistol earlier that evening. The evidence is clearly sufficient to sustain the conviction. *People v. Nowak*, 45 Ill.2d 158.

Defendant contends next that the trial court improperly admitted evidence of an unrelated criminal offense. The evidence of which he complains was contained in his statement and was in explanation of why he had sold the gun to Claggett. This was admitted in the course of proving what defendant had said to the police and what he had told the assistant State's Attorney, and under the circumstances shown its admission into evidence was not error.

Finally defendant complains of the court's refusal to give a tendered instruction on circumstantial evidence (IPI Criminal No. 3.02). The People tendered, and the court gave, an instruction in the form of IPI Criminal No. 3.02 but without the second paragraph. Obviously the proof of guilt was, in part, defendant's own statements, and with direct evidence of his participation in the crime, the trial court correctly refused the tendered instruction.

In the absence of prejudicial error, the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

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